

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-220209

**DATE:** November 29, 1985

**MATTER OF:** Robbinsville Contracting Co.

**DIGEST:**

A bidder's failure to specify in its bid the type of retaining wall it intended to build for a road construction project may be waived as a minor informality where the requirement to specify the wall type was inadvertently included in the IFB and the bidder gained no competitive advantage over bidders who furnished the information.

Robbinsville Contracting Co. protests the proposed award of a contract to Blaine Stewart Contractors, the low bidder under invitation for bids (IFB) No. DTFH71-85-B-00028, issued by the Federal Highway Administration (FHWA), for the construction of 1.7 miles of road in the Nantahala National Forest. Robbinsville contends that Stewart's bid was nonresponsive because the firm failed to specify the type of retaining wall that it would construct under the contract.

We deny the protest.

The dispute arises from Stewart's failure to comply with the following IFB language:

The Contractor shall specify on the bid documents the wall type he has selected. No substitution of alternate wall types will be allowed after award of the contract except as provided in Section 104.03 [concerning value engineering changes].

As illustrated by drawings included in the solicitation package, the IFB requires the construction of a structurally sound retaining wall. However, apart from general architectural considerations, the IFB left the design of the wall to the contractor's discretion.

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The protester argues that it and other bidders were prejudiced because Stewart's failure to specify a wall type gave it additional time to shop for a wall that could be constructed at less cost. Consequently, the protester maintains that the bid must be rejected as nonresponsive.

On the other hand, the FHWA says that the requirement that bidders specify a wall type was inadvertently included in the IFB and that the information is immaterial to the bid evaluation. According to the FHWA, bids were to be based on the estimated cost of an acceptable wall system. The awardee is to submit final plans and drawings regarding the wall for approval during contract performance. In these circumstances, the FHWA states, it is sufficient that Stewart will be bound by its bid to build an acceptable wall at its bid price.

Responsiveness concerns whether a bidder has unequivocally offered to provide supplies and services in conformity with the material terms and conditions of the solicitation. Action Mfg., Co., B-208205.2, Dec. 13, 1982, 82-2 CPD ¶ 526. Although as a general rule, a bid must be rejected as nonresponsive when it does not strictly comply with the solicitation's requirements, including requirements for information, this rule does not apply to deviations which are immaterial or which concern matters of form rather than of substance. Federal Acquisition Regulation, 48 C.F.R. § 14.405 (1984). Instead, we have consistently held that bids should not be rejected for failure to furnish information if the information was not necessary to evaluate bids and bidders would be bound to perform in accordance with the solicitation. Sulzer Bros., Inc., et al., B-188148, Aug. 11, 1977, 77-2 CPD ¶ 112; Action Mfg., Co., B-208205.2, supra.

Stewart's failure to specify a wall type in this instance does not require rejection of its bid. The requirement that bidders specify a wall type is purely informational in nature. According to the agency, the information was requested by mistake and was not actually used in evaluating bids. Moreover, Stewart took no exception in its bid to any of the solicitation's terms and, in our view, will be obligated upon award to design and build an acceptable retaining wall. Thus, its

failure to specify a wall type should be waived as a minor informality.

Finally, we see no merit to the protester's argument that Stewart would gain a competitive advantage if it is permitted to choose the most cost effective wall type after award. All the firms bid on a fixed price basis. Assuming Stewart did not base its bid on a specific wall type, it nevertheless must supply a compliant wall at its bid price. Thus, it gained no competitive advantage by postponing its choice of a wall type.

The protest is denied.

*for* *Signature*  
Harry R. Van Cleve  
General Counsel